



February 20, 2015

SENATE BILL No. 329

DIGEST OF SB 329 (Updated February 18, 2015 1:43 pm - DI 104)

Citations Affected: IC 16-18; IC 16-19; IC 16-34.

Synopsis: Disposition of aborted remains. Defines "fetus". Establishes a right, beginning January 1, 2016, for a pregnant woman who has an abortion to determine the final disposition of the aborted fetus. Requires that a pregnant woman be informed orally and in writing before an abortion: (1) that the pregnant woman has a right to determine the final disposition of the remains of the aborted fetus; (2) of available options for disposition of the aborted fetus; and (3) of available counseling services. Requires the state department of health to: (1) adopt rules concerning the disposal methods to be used for aborted fetuses; and (2) develop the forms for certain information provided to the pregnant woman.

Effective: Upon passage; July 1, 2015; January 1, 2016.

Brown L, Banks A

January 8, 2015, read first time and referred to Committee on Health & Provider Services.
February 19, 2015, reported favorably — Do Pass.

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February 20, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 329

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-1.5, AS AMENDED BY P.L.136-2013,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1.5. (a) "Abortion clinic", for purposes of
4 **IC 16-19-3-31**, IC 16-21-2, **and IC 16-34-3**, means a freestanding
5 entity that:
6 (1) performs surgical abortion procedures; or
7 (2) beginning January 1, 2014, provides an abortion inducing
8 drug for the purpose of inducing an abortion.
9 (b) The term does not include the following:
10 (1) A hospital that is licensed as a hospital under IC 16-21-2.
11 (2) An ambulatory outpatient surgical center that is licensed as an
12 ambulatory outpatient surgical center under IC 16-21-2.
13 (3) A physician's office as long as:
14 (A) the surgical procedures performed at the physician's office
15 are not primarily surgical abortion procedures; and

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(B) abortion inducing drugs are not the primarily dispensed or prescribed drug at the physician's office.

SECTION 2. IC 16-18-2-128.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 128.7. "Fetus" means a human being produced by a human pregnancy from fertilization through birth, including a zygote, blastocyst, and fetus.**

SECTION 3. IC 16-18-2-161, AS AMENDED BY P.L.127-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 161. (a) "Health care facility" includes:

(1) hospitals licensed under IC 16-21-2, private mental health institutions licensed under IC 12-25, and tuberculosis hospitals established under IC 16-11-1 (before its repeal);

(2) health facilities licensed under IC 16-28; and

(3) rehabilitation facilities and kidney disease treatment centers.

(b) "Health care facility", for purposes of IC 16-21-11 **and IC 16-34-3**, has the meaning set forth in IC 16-21-11-1.

(c) "Health care facility", for purposes of IC 16-28-13, has the meaning set forth in IC 16-28-13-0.5.

SECTION 4. IC 16-19-3-31 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 31. (a) The state department shall adopt:**

(1) emergency rules in the manner provided under IC 4-22-2-37.1 not later than July 1, 2015; and

(2) permanent administrative rules under IC 4-22-2 not later than January 1, 2016;

specifying the disposal methods to be used by abortion clinics and health care facilities to dispose of aborted fetuses.

(b) This section expires December 31, 2016.

SECTION 5. IC 16-34-2-1.1, AS AMENDED BY P.L.98-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: Sec. 1.1. (a) An abortion shall not be performed except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if the following conditions are met:

(1) At least eighteen (18) hours before the abortion and in the presence of the pregnant woman, the physician who is to perform the abortion, the referring physician or a physician assistant (as defined in IC 25-27.5-2-10), an advanced practice nurse (as defined in IC 25-23-1-1(b)), or a certified nurse midwife (as defined in IC 34-18-2-6.5) to whom the responsibility has been



delegated by the physician who is to perform the abortion or the referring physician has informed the pregnant woman orally and in writing of the following:

(A) The name of the physician performing the abortion, the physician's medical license number, and an emergency telephone number where the physician or the physician's designee may be contacted on a twenty-four (24) hour a day, seven (7) day a week basis.

(B) That follow-up care by the physician or the physician's designee (if the designee is licensed under IC 25-22.5) and is available on an appropriate and timely basis when clinically necessary.

(C) The nature of the proposed procedure or information concerning the abortion inducing drug.

(D) Objective scientific information of the risks of and alternatives to the procedure or the use of an abortion inducing drug, including:

- (i) the risk of infection and hemorrhage;
- (ii) the potential danger to a subsequent pregnancy; and
- (iii) the potential danger of infertility.

(E) That human physical life begins when a human ovum is fertilized by a human sperm.

(F) The probable gestational age of the fetus at the time the abortion is to be performed, including:

- (i) a picture of a fetus;
- (ii) the dimensions of a fetus; and
- (iii) relevant information on the potential survival of an unborn fetus;

at this stage of development.

(G) That objective scientific information shows that a fetus can feel pain at or before twenty (20) weeks of postfertilization age.

(H) The medical risks associated with carrying the fetus to term.

(I) The availability of fetal ultrasound imaging and auscultation of fetal heart tone services to enable the pregnant woman to view the image and hear the heartbeat of the fetus and how to obtain access to these services.

(J) That the pregnancy of a child less than fifteen (15) years of age may constitute child abuse under Indiana law if the act included an adult and must be reported to the department of child services or the local law enforcement agency under



IC 31-33-5.

(2) At least eighteen (18) hours before the abortion, the pregnant woman will be informed orally and in writing of the following:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care from the county office of the division of family resources.

(B) That the father of the unborn fetus is legally required to assist in the support of the child. In the case of rape, the information required under this clause may be omitted.

(C) That adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.

(D) That there are physical risks to the pregnant woman in having an abortion, both during the abortion procedure and after.

(E) That Indiana has enacted the safe haven law under IC 31-34-2.5.

(F) The:

(i) Internet web site address of the state department of health's web site; and

(ii) description of the information that will be provided on the web site and that are;

described in section 1.5 of this chapter.

(G) For the facility in which the abortion is to be performed, an emergency telephone number that is available and answered on a twenty-four (24) hour a day, seven (7) day a week basis.

(H) On a form developed by the state department and as described in IC 16-34-3, that the pregnant woman has a right to determine the final disposition of the remains of the aborted fetus.

(I) On a form developed by the state department, information concerning the available options for disposition of the aborted fetus.

(J) On a form developed by the state department, information concerning any counseling that is available to a pregnant woman after having an abortion.

The state department shall develop and distribute the forms required by clauses (H) through (J).

(3) The pregnant woman certifies in writing, on a form developed by the state department, before the abortion is performed, that:

(A) the information required by subdivisions (1) and (2) has



1 been provided to the pregnant woman;

2 (B) the pregnant woman has been offered by the provider the
3 opportunity to view the fetal ultrasound imaging and hear the
4 auscultation of the fetal heart tone if the fetal heart tone is
5 audible and that the woman has:

6 (i) viewed or refused to view the offered fetal ultrasound
7 imaging; and

8 (ii) listened to or refused to listen to the offered auscultation
9 of the fetal heart tone if the fetal heart tone is audible; and

10 (C) the pregnant woman has been given a written copy of the
11 printed materials described in section 1.5 of this chapter.

12 (4) At least eighteen (18) hours before the abortion and in the
13 presence of the pregnant woman, the physician who is to perform
14 the abortion, the referring physician or a physician assistant (as
15 defined in IC 25-27.5-2-10), an advanced practice nurse (as
16 defined in IC 25-23-1-1(b)), or a midwife (as defined in
17 IC 34-18-2-19) to whom the responsibility has been delegated by
18 the physician who is to perform the abortion or the referring
19 physician has provided the pregnant woman with a color copy of
20 the informed consent brochure described in section 1.5 of this
21 chapter by printing the informed consent brochure from the state
22 department's Internet web site and including the following
23 information on the back cover of the brochure:

24 (A) The name of the physician performing the abortion and the
25 physician's medical license number.

26 (B) An emergency telephone number where the physician or
27 the physician's designee may be contacted twenty-four (24)
28 hours a day, seven (7) days a week.

29 (C) A statement that follow-up care by the physician or the
30 physician's designee who is licensed under IC 25-22.5 is
31 available on an appropriate and timely basis when clinically
32 necessary.

33 (b) Before an abortion is performed, the provider shall perform, and
34 the pregnant woman shall view, the fetal ultrasound imaging and hear
35 the auscultation of the fetal heart tone if the fetal heart tone is audible
36 unless the pregnant woman certifies in writing, on a form developed by
37 the state department, before the abortion is performed, that the
38 pregnant woman:

39 (1) does not want to view the fetal ultrasound imaging; and

40 (2) does not want to listen to the auscultation of the fetal heart
41 tone if the fetal heart tone is audible.

42 SECTION 6. IC 16-34-3 IS ADDED TO THE INDIANA CODE AS



A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 3. Treatment of Aborted Remains

Sec. 1. This chapter is effective beginning January 1, 2016.

Sec. 2. (a) A pregnant woman who has an abortion under this article has the right to determine the final disposition of the aborted fetus.

(b) After receiving the notification and information required by IC 16-34-2-1.1(a)(2)(H) and IC 16-34-2-1.1(a)(2)(I), the pregnant woman shall inform the abortion clinic or the health care facility:

(1) in writing; and

(2) on a form prescribed by the state department; of the pregnant woman's decision for final disposition of the aborted fetus before the aborted fetus may be discharged from the abortion clinic or the health care facility.

(c) If the pregnant woman is a minor, the abortion clinic or health care facility shall obtain parental consent in the disposition of the aborted fetus unless the minor has received a waiver of parental consent under IC 16-34-2-4.

(d) The abortion clinic or the health care facility shall document the pregnant woman's decision concerning disposition of the aborted fetus in the pregnant woman's medical record.

Sec. 3. If the pregnant woman chooses a means for final disposition that is not required by law or by rule of an abortion clinic or a health care facility, the pregnant woman is responsible for the costs related to the final disposition of the aborted fetus.

Sec. 4. (a) The requirements of IC 16-37-3 apply to the final disposition of an aborted fetus with a gestational age of at least twenty (20) weeks of age.

(b) A pregnant woman may decide to cremate or inter an aborted fetus with a gestational age of less than twenty (20) weeks of age.

(c) The local health officer shall issue a permit for the disposition of the aborted fetus to the person in charge of interment for the interment of an aborted fetus described in subsection (b). A certificate of stillbirth is not required to be issued for an aborted fetus with a gestational age of less than twenty (20) weeks of age.

Sec. 5. The state department shall make any changes necessary to the informed consent brochure under IC 16-34-2-1.5 that are necessary to comply with IC 16-34-2-1.1 and this chapter.

Sec. 6. The state department shall develop and distribute the forms required by section 2 of this chapter.



1 **SECTION 7. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Health & Provider Services, to which was referred Senate Bill No. 329, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 329 as introduced.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 9, Nays 2

